

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6470 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ELECTRO FERRO ALLOYES PVT LTD

Versus

ESI CORP.

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Appearance:

MR MB FAROOQUI for Appellant

MR SR SHAH for Respondent

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 06/05/96

ORAL JUDGEMENT

1. Heard the learned counsel for the respective parties. Appeal admitted.
2. At the joint request of the learned counsel for the respective parties this appeal is taken up for final hearing today.
3. As a result of the hearing it becomes obvious that the ESI Court has not gone into certain factual aspects of the matter and has to some extent abdicated

its own functional jurisdiction by leaving to the adjudicating authority the appreciation of evidence, which it should not have done, since the matter was open before it. Merely by way of an illustration I may point out that (vide paragraph 25 of the impugned judgement), the question of whether the employer has made deductions and/or contributions in respect of the salary paid to its staff in the Bombay Office, has been left to the adjudicating authority, instead of being dealt with by the court itself.

4. It also appears that the employer cannot be asked to make deductions and/or contribution in respect of certain expenses incurred by it which would be in the nature of incidental expenses, not directly connected with manufacturing expenses, and such expenses being paid to outside agencies rather than to its employees.

5. Thus, the impugned judgement requires to be reconsidered in the light of not only the two factors mentioned hereinabove, but also on the basis of the total evidentiary material on record as it exists, together with such evidence as may be tendered by the parties in this connection.

6. In the premises aforesaid the impugned judgement and order are quashed and set aside. The case is remanded back to the Employees Insurance Court for re-determination on a total consideration of the evidence on record in accordance with law, and in the light of the aforesaid observations. It is clarified that the parties shall be at liberty to lead such further evidence as they may choose to do.

7. Since the original application is of the year 1986, the E.S.I. court is directed to give due priority and decide the same as expeditiously as possible and preferably before 30th November 1996.

8. This appeal is therefore allowed with no orders as to costs.

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